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IN THE
Supreme Court of the United States

October Term, 1970

No.

UNITED STATES OF AMERICA,

Appellant,

vs.

NORMAN GEORGE REIDEL,

Appellee.

On Appeal From the United States District Court for
the Central District of California.

MOTION TO AFFIRM.

Pursuant to Rule 16(1)(c) of the Rules of this Court,
appellee moves that the judgment of the District Court
be affirmed.

Statement.

This is a direct appeal from a judgment of the
United States District Court for the Southern District
of California dismissing an indictment in three counts
under 18 U.S.C. 1461. The Court concluded that since
the material named in the indictment was not directed

at children nor directed at an unwilling public but was material which had been solicited by adults, there was no governmental interest to justify a criminal prosecution for distribution of the material. Concurring with the decision of District Judge McBride in *United States v. Lethe*, 312 F. Supp. 421 (D.C. Cal. 1970), the Court held that the specific prosecution here involved is constitutionally impermissible and granted the motion to dismiss.

ARGUMENT.

The District Judge correctly concluded that 18 U.S.C. 1461, as construed and applied in the case herein, abridges the exercise of freedoms of speech and press guaranteed by the First Amendment.

It is not correct, it is submitted, to assert as the appellant does, that "this case is in direct conflict with *Roth*" (Jurisdictional Statement, p. 5). On the contrary, it appears more accurate to state that the decision of the Court below was consistent with the rulings of the Court in *Stanley v. Georgia*, 394 U.S. 557, and *Rowan v. United States Post Office Department*, 90 S. Ct. 484.

The Government suggests that if summary affirmance is not granted, then "briefing and argument might prove useful" (Jurisdictional Statement, p. 6). On this issue appellee submits that summary affirmance is called for, but that if probable jurisdiction is noted, then plainly briefing and argument are required. Indeed appellee is prepared to brief the case on an expedited basis and is ready to argue the case at the earliest date deemed appropriate by the Court.

Conclusion.

For the foregoing reasons, the judgment of the District Court should be affirmed. In the event the Court notes probable jurisdiction, briefing and oral argument should be expedited.

Respectfully submitted,

STANLEY FLEISHMAN,

Attorney for Appellee.

SAM ROSENWEIN,
Of Counsel.